

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM

THE HON'BLE MR. JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.A. No.769 of 2017
and
C.M.P.No.10565 of 2017

- 1.The Principal Secretary,
Ministry of Health and Family Welfare,
Government of Tamil Nadu,
Secretariat, Chennai - 9.
- 2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai. ... Appellants

Vs.

S.R.Trust rep. by its Trustee
G.Sakthi Saravanan ... Respondent

Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 28.04.2017 made in W.P.No.9884 of 2017. Prayer in WP.No.9884/2017 Praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in his letter No.32125/ PME-2/ 2016-2 dated 30.3.2017 quash the same and further direct to issue the Essentiality Certificate/ permission to the petitioner trust to start Meenakshi College of Nursing with an intake of 60 seats per year from the Academic Year 2017-2018 at Kotakudi Village Melur Taluk Madurai District forthwith

For Appellants .. Mr.P.S.Sivashanmugha Sundaram,
Spl. Govt. Pleader

For Respondent .. Mr.K.Subramanian,
Sr. Counsel
for Mr.S.Punniyakotti

JUDGMENT

(Judgment of the Court was delivered by NOOTY. RAMAMOHANA RAO, J.)

This writ appeal is preferred by the Principal Secretary, Ministry of Health and Family Welfare, Government of Tamil Nadu and Director of Medical Education, Chennai, the two respondents in W.P.No.9884 of 2017.

2.The respondent/writ petitioner Trust was registered as a Public Trust with an aim to establish and maintain hospitals, surgical homes, health clinics, nursing homes, dispensaries and other relevant institutions. With a view to construct a nursing college so that a college of nursing can be established, land in Survey Nos.245 and 247/1A of Kottakudi Village Panchayat, Melur Taluk, Madurai District has been developed. The writ petitioner Trust has also obtained the necessary permission for construction of the buildings thereon. It initially obtained necessary permission from the Director of Town and Country Planning, Government of Tamil Nadu, Chennai and followed it up with a permission formally accorded by the Deputy Director of Town Planning, Madurai on 30.09.2015 by proceedings bearing No. Na.Ka.No.1027/2015 MM3. It will be appropriate to notice that the second appellant - the Director of Medical Education has submitted a letter on 06.10.2016 to the first appellant furnishing the report of the Inspection Team comprising of the Dean, Madurai Medical College, Madurai and the Principal, College of Nursing, Madurai Medical College, Madurai, as constituted by the Government on 31.08.2016. The Inspection Report declared that all the physical facilities have been personally inspected and verified as listed in the report and that the infrastructural facilities in terms of land, buildings, lab and equipments, library, vehicles, teaching staff and clinical facilities are found to be adequate to start the B.Sc (Nursing) Degree Course with an annual intake of 60 students. It will be absolutely important to notice from the Report which mentioned clearly that planning approval for the building area was granted, which can also be upgraded proportionately with the increase of the number of students. The proposed building is, however, found to be adequate, for the intake of 60 students. In spite of the said report made available by the Inspection Team, which report was forwarded by the Director of Medical Education to the Principal Secretary to the Government, Ministry of Health and Family Welfare as on 06.10.2016, the necessary essentiality certificate has not been granted. In those circumstances, W.P.No.9884 of 2017 has been instituted in this Court.

3. Since it is not really relevant for disposal of this writ appeal, we are not advertent to the past litigative history of this case. Suffice it to notice that pursuant to our expressing strong reservation about the manner in which the Inspection Report of the Inspection Team has not been approved/acted in time by granting the essentiality certificate so that the follow up action can be pursued from the Indian Nursing Council by the writ petitioner Trust, the State Government has re-examined the entire matter and passed orders through their G.O.Ms.No.261 Health and Family Welfare (P.E - 2) Department dated 26.07.2017. In paragraph 6 of the order, it is noted that the Director of Town and Country Planning, Chennai has given approval for the building plan of Meenakshi College of Nursing and permission for construction of building vide R.O.C.No.15585/2015/BA1 dated 02.09.2015 and also the building plan was approved bearing No.153 of 2015. In continuation of the permission accorded by the Director of Town and Country Planning, Chennai, the Deputy Director of Town Planning, Madurai, has also passed orders through his R.O.C.No.1027/2015/MM3 dated 30.09.2015. It is now brought out that erroneously the Government thought earlier that the Director of Town and Country Planning, Chennai has not granted necessary permission for developing the land, whereas such a permission was accorded as of 02.09.2015. The mistake of perception in that regard has been since rectified and hence the essentiality certificate has now been granted to start B.Sc (Nursing) Degree Course with an annual intake of 60 students from the academic session 2017-2018. Even though the last date for submission to the Indian Nursing Council for the year 2017-2018 is already over, but of course, this order passed by the Government through their G.O.Ms.No.261 Health and Family Welfare (PME-2) Department dated 26.07.2017 is made subject to the result of this writ appeal. It was also made subject to the condition that the writ petitioner Trust should obtain building completion certificate from the competent authority and recognition and affiliation from the Indian Nursing Council, Tamil Nadu Nurses and Midwives Council and the Tamil Nadu Dr.M.G.R. Medical University respectively before admitting the students. There are also additional conditions incorporated in Clauses (a) to (g).

4. Mr. P.S. Sivashanmugha Sundaram, learned Special Government Pleader appearing for the appellants would contend that the error committed by the Government in not noticing earlier the orders passed by the Director of Town and Country Planning, Chennai, is not a deliberate one, as is sought to be made out by the writ petitioner Trust but it is an oversight induced due to variation in the proceedings number and date between those granted by the Director of Town and Country Planning, Chennai and the one granted by the Deputy Director of Town Planning, Madurai. While the Director of Town and Country Planning,

Chennai granted necessary permission on 02.09.2015, the Deputy Director of Town Planning, Madurai had issued the necessary administrative follow up proceedings on 30.09.2015. This confusion is purely an accidental one but not a deliberate one.

5. We may not really get into the thick of the factors which perhaps may have induced the oversight. It may not be really relevant or necessary for us now to decipher as to whether the error to notice the order of Director of Town and Country Planning dated 06.10.2016 is a case of sheer oversight. We prefer to take the lesser of the options and we assume that the State Government, by sheer oversight, failed to notice that the Director of Town and Country Planning, Chennai has already accorded the necessary permission for developing the land and also for construction of buildings thereon on 02.09.2015 itself and that the proceedings of the Deputy Director of Town Planning, Madurai on 30.09.2015 is a mere follow up/falling in line action pursuant to the proceedings of the Director of Town and Country Planning, Chennai dated 02.09.2015. It is therefore a matter of regret.

6. The essentiality certificate, which has been alluding so far, now been granted by the Government. No doubt, pursuant to the strong views expressed by us at the time of hearing of this case and the order passed on 21.07.2017. Now that the State Government has granted the essentiality certificate on 26.07.2017, we stop pursuing the lead any further.

7. However, Mr. K. Subramanian, learned senior counsel appearing for the respondent/writ petitioner Trust would point out that the error of judgment on the part of the Government is not an accidental one as is sought to be made out today but it is a deliberately calculated one to ensure that the writ petitioner Trust would miss the deadline set up by the Indian Nursing Council, which expired in November, 2016. The learned senior counsel would further elaborate that when the entire inspection report was carried out much earlier and was also made available to the State Government as on 06.10.2016, there was no justification whatsoever on the part of the State Government to drag their feet on one pretext or the other. The reasons for not deciding the issue are deliberate and explicit from the record. Hence the learned senior counsel would urge that the State Government must take necessary steps for remedying the situation properly.

8. We see considerable force behind the submission made by the learned senior counsel. If only the oversight had not occasioned, the State Government, can be legitimately expected to have granted the essentiality certificate, which it did on 26.07.2017 any time prior to November 2016 itself, inasmuch as the inspection team constituted by the State Government has

found the writ petitioner Trust to have complied with all the essential requirements for establishing and starting college of nursing with 60 students intake. We therefore assume that in normal circumstances, the essentiality certificate granted through G.O.Ms.No.261 Health and Family Welfare (PME-2) Department dated 26.07.2017, would have been granted any time between 06.10.2016 and before the deadline set up by the Indian Nursing Council would have expired. Therefore, in these peculiar facts and circumstances of this case and that due to oversight of the State Government, the writ petitioner Trust has been delayedly granted the essentiality certificate and the fault is not at the doorstep of the writ petitioner, we direct the appellants herein to forthwith take up the matter with the Indian Nursing Council with a request to it to act on the essentiality certificate granted by it on 26.07.2017 and to process the case and claim of the writ petitioner Trust for starting B.Sc. (Nursing) Degree Course with an intake of 60 students in the academic year 2017-2018 and pass appropriate orders before the deadline for the admission process for the B.Sc. (Nursing) Degree Course for the academic session 2017-2018 can be concluded. One week time is granted to the appellants to take up the matter with the Indian Nursing Council as a special case.

9.The writ appeal stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To:

1.The Principal Secretary,
Ministry of Health and Family Welfare,
Government of Tamil Nadu,
Secretariat, Chennai - 9.

2.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai.

+1cc to M/s.S.Punniyakotti,Advocate sr.55259
+1cc to Government Pleader sr.54886

W.A.No.769 of 2017

NRI (co)
ss (2/8/2017)